IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 157 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ABDUL GAFFAR ABDUL SATTAR PATEL - Applicant(s)
Versus
SAMIMBANU D/O BASHIRBHAI KANGDA & 1 - Respondent(s)

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Appearance :
MR PP MAJMUDAR for Applicant(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
BY POST for Respondent(s) : 1,
MR ANAND L SHARMA for Respondent(s) : 1,
Mr. KT Dave, Addl.PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 22/08/2007
ORAL JUDGMENT

Rule. Shri Anand Sharma, learned advocate waives service of Rule on behalf of respondent No.1 and Shri KT Dave, learned APP

waives service of Rule on behalf of respondent No.2 State. With the consent of learned advocates appearing for the parties, the matter is taken up for final hearing today.

2. By way of this petition under Article 226/227 of the Constitution of India the petitioner original-applicant-husband has prayed for an appropriate writ or order to quash and set aside the order dated 16.12.2006 passed by the learned Additional Sessions Judge & Presiding Officer, 11th Fast Track Court, Gondal Camp at Dhoraji in not condoning the delay of approximately 65 days in preferring Revision Application challenging the judgment and order passed by the learned JMFC, Dhoraji in Criminal Misc. Application No. 312 of 2005.

3. It appears from the record that the respondent No.1 has preferred application under Section 125 of the Cr.P.C., in the Court of learned JMFC, Dhoraji being Criminal Misc.

Application No. 312 of 2005 and by judgment and order dated 14.6.2006 the learned JMFC allowed the said application in part directing the petitioner to pay maintenance at Rs. 2,000 per month with effect from 13.12.2005. It also appears from the record that the same was an ex-parte order. Being aggrieved and dissatisfied with the said judgment and order passed by the learned JMFC in aforesaid application the petitioner preferred revision application before the learned Additional Sessions Judge, Dhoraji and as there was a delay of approximately 65 days in preferring the revision application an application for condonation of delay was submitted and by impugned order dated 16.12.2006 the learned Additional Sessions Judge and Presiding Officer, 11th Fast Track Court, Gondal Camp at Dhoraji dismissed the said application. Being aggrieved and dissatisfied with the said order the petitioner original-applicant has preferred the present application under Article 226/227 of the Constitution of India.

4. Shri PP Majmudar, learned advocate appearing for the petitioner has vehemently submitted that in the facts and circumstances of the case when an ex-parte order was passed by the learned JMFC, the learned revisional court ought to have condoned the delay and ought to have decided the revision application on merits rather than non-suiting the petitioner on a technical ground. He has submitted that even the petitioner is ready and willing to pay reasonable cost.

5. Shri Anand Sharma, learned advocate appearing on behalf of the respondent No.1 has submitted that it is not that the petitioner was not aware of the proceedings and considering the above the learned revisional court has rightly dismissed the application for condonation of delay.

6. Heard the learned advocates appearing for the respective parties. This Court is not at

present expressing any opinion on merits whether the order passed by the learned JMFC, Dhoraji was an ex-parte order and/or whether the petitioner was aware of the proceedings or not. However at the same time it is also required to be considered that the delay is of approximately 65 days and normally unless it is found that there are mala fides in not preferring revision application within time the delay is to be condoned and a party is required to be given opportunity to put forward his case on merits rather than non-suiting him on technical grounds. Considering the above, the impugned order passed by the learned Revisional Court in dismissing the application for condonation of delay is quashed and set aside and the delay of approximately 65 days caused in preferring the revision application is hereby condoned. The Revisional Court is directed to decide and dispose of the revision application in accordance with law and on its own merits. Rule is made absolute accordingly. The petitioner is directed to

deposit an amount of Rs. 3000 [Three Thousand] by way of costs with the Trial Court within the period of three weeks from today and on such deposit the learned Trial Court is directed to pay the said amount to the respondent No.1 by way of Account Payee cheque. If the aforesaid amount is not deposited within the period of three weeks, the order passed by the learned Revisional Court in dismissing the application for condonation of delay shall remain in force and the revision application is not required to be decided and disposed of on merits.

[M.R. Shah, J.]

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